THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 12801 OF 2006

Dated 23rd February 2007

Between:

C.Raghuveera Reddy & others

…Petitioners

And

The A.P.Co-operative Tribunal, Hyderabad,
Rep. by its Presiding Officer & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 12801 OF 2006

O R D E R:

Petitioners claim to be the members of The Maturu Co-operative Housing Society Limited, A.C. Guards, Hyderabad, the 4th respondent herein. They assail the order, dated 26.5.2005, passed by the A.P. Cooperative Tribunal at Hyderabad (for short "the Tribunal"), in I.A.No.282 of 2006 in C.T.A.No.36 of 2006.

The society was registered in the year 1981. For the past several years, the society is without an elected committee. On a representation made by the members of the society, the Divisional Co-operative Officer, Golkonda Division, Hyderabad, the 3rd respondent herein, appointed Persons-in-charge, through his proceedings dated 19.12.2005, with Sri T.Sridhar Rao, as Chairman,

Sri Hakim Aslam Basha, Assistant Registrar, and three others as members, for a period of three months. During the tenure of the committee, election is said to have been conducted on 8.2.2006. The 5th respondent is said to have been elected as Chairman and some others as members of the Managing Committee. Subsequently, the 3rd respondent issued proceedings dated 1.4.2006, appointing Sri Hakim Aslam Basha, Assistant Registrar, as Special Officer, to manage the affairs of the society, for a period of six months, or till the elections are conducted to the society.

The 5th respondent, representing the society, filed C.T.A.No.36 of 2006, before the Tribunal, challenging the order dated 1.4.2006, passed by the 3rd respondent. In the appeal, he filed I.A.No.282 of 2006, with a prayer to suspend the said order, and for a consequential direction to the 3rd respondent, to hand over the records, to enable the Managing Committee of the society, to function. The application was opposed by the 3rd respondent. The Tribunal allowed the IA, suspending order dated 1.4.2006, and directing the 3rd respondent, to hand over the records of the society, on or before 31.5.2006.

The petitioners, who were not parties to the CTA, filed this writ petition, against the order passed by the Tribunal. They contend that the Persons-in-charge, appointed under sub-section (7) of Section 32 of A.P. Cooperative Societies Act, 1964 (for short “the Act”), do not have the power to conduct elections, and it is only the Registrar of the Societies, that can arrange for election of a Committee, under clause (d) of Section 32(7) of the Act. They have urged several other grounds, including the non-joinder of necessary parties in the IA.

On behalf of respondents 2 to 4, the 3rd respondent filed a

counter affidavit. It is stated that the Persons-in-charge, appointed through proceedings dated 19.12.2005, did not have the power or competence, to hold elections, and though a clear direction was issued through letter dated 30.1.2006, to the Persons in-charge, to desist from proceeding with the election, they had gone ahead. Another point urged by them is that in the order dated 19.12.2005, it was clearly directed that the record of the society shall be with the Assistant Registrar, who was one of the Persons-in-charge, and the so-called elections have been conducted, without reference to him, much less with his participation.

The 5th respondent filed a counter affidavit supporting the order of the Tribunal. It is stated *inter alia* that the elections were conducted on 8.2.2006, in accordance with the provisions of the Act and the Rules, and if any one feels aggrieved by the same, the only course was to raise an election dispute, before the proper forum. He contends that the Tribunal has taken the legal and factual aspects, into account, and had passed an order, which, at the most would enable the elected committee to function, and that the same does not warrant interference.

Sri E. Manohar, learned Senior Counsel, appearing for the petitioners, submits that the order passed by the Tribunal in the IA had far exceeded the scope of the CTA itself. He contends that with the expiry of the term of the Persons-in-charge appointed on 19.12.2005, the 3rd respondent exercised the power under Section 32 of the Act, and passed the order, dated 1.4.2006. He contends that the elections said to have been held on 8.2.2006 are *ex-facie* illegal and *non-est.* He made reference to the various provisions of the Act and the Rules and decided cases.

Learned Government Pleader for Cooperation, appearing for respondents 2 to 4, had supported the cause of the petitioners. He submits that the provisions of the Act are very clear to the effect that wherever Persons-in-charge are appointed, under Section 32(7) of the Act, the power to conduct elections to the Managing Committee of the society, either during the term of the Persons-in-charge, or thereafter, vests with the Registrar and nobody else.

The actual opposition to the writ petition is by the 5th respondent. His counsel Ms. Usha Kiran, submits that once there existed an elected Managing Committee of the society, there was absolutely no basis for the 3rd respondent for issuing the order dated 1.4.2006. She contends that the validity of an election can be challenged, only by way of an election petition, by the aggrieved parties, and the authorities under the Act and Rules, are expected to ensure that the elected committee functions, without any impediment. She raises an objection as to the maintainability of the said writ petition, on the ground that the petitioners were not parties to the CTA.

This case, in its entirety, warrants interpretation of several important provisions of the Act and the Rules. The whole dispute turns around the legality to be attached to the election that is said to have taken place on 8.2.2006. The committee so elected felt aggrieved by the order, dated 1.4.2006, passed by the 3rd respondent, through which a Special Officer was appointed, to administer the affairs of the committee. Though Section 34 of the Act is referred to in it, from its purport, it is evident that it is the one, passed under Section 32. While adjudicating the correctness of the order, dated 1.4.2006, the Tribunal may have to delve into the legality of

election, not from the point of view of any irregularities in the election, or eligibility of the candidates, but as to the very competence of the Persons-in-charge, to hold the elections. This, in turn, would warrant examination of the scope of various provisions, in particular, the different clauses of sub-section (7) of Section 32 of the Act.

It is no doubt true that the Tribunal had examined the matter, from various angles, while disposing of the I.A. However, it is to be noticed that the prayer in the IA is nothing but the replica of the prayer in the CTA, except that in the former, the prayer is to suspend the order, dated 1.4.2006, and in the latter, it is for setting aside. The purport of interim order to be passed by a court or Tribunal, for the most part of it, is to ensure the continuance of an existing state of affairs, as on the date of presentation of the proceedings. It is only in rare and exceptional cases, that a new state of affairs is permitted to be brought about, through such a course.

In this case, admittedly the records of the society were kept with one Mr.Hakeem Aslam Basha, Assistant Registrar. A specific mention was made to this effect, in the proceedings dated 19.12.2005. Soon after the expiry of the term of the committee, the 3rd respondent issued the proceedings dated 1.4.2006, appointing the said Assistant Registrar as Special Officer. It is not even alleged in the CTA or IA that the elected committee had secured the possession of the records, and thereafter, they were taken away by any official. Whatever may be the permissibility of securing the possession of the records of the society, as a consequence of the final order that may be passed in the CTA, such a course becomes totally impermissible, by way of interlocutory order. This court refrains from making observations on several questions that have been urged by the parties, lest they have any

impact on the adjudication of the CTA itself.

For the foregoing reasons, the writ petition is allowed, and the order dated 26.05.2006 in I.A.No.282 of 2006 in C.T.A.No.36 of 2006, is set aside. Having regard to the seriousness of the dispute between the parties and the stages involved, the Tribunal shall endeavour to dispose of the CTA itself, within six weeks, from the date of receipt of a copy of this order. There shall be no order as to costs.

23rd February 2007

Note: Issue C.C. in three days.

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